

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Tribunal File Number: 20-002477/AABS

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

Basma Ibrahim

Applicant

and

Aviva Insurance Company

Respondent

MOTION ORDER

Order made by: Samia Makhamra, Adjudicator

Date of Order: December 7, 2020

OVERVIEW

- [1] This proceeding, under the Statutory Accident Benefits Schedule – Effective September 1, 2010, arises out of a motor vehicle accident on December 28, 2017.
- [2] This matter is scheduled for a videoconference hearing on June 14, 15, 16, 17 and 18, 2021
- [3] The issues in dispute are a non-earner benefit (NEB), attendant care, seven treatment plans by Integrated Health Group, including a benefit for psychological services, an award, and interest.

MOTION

- [4] On September 28, 2020, the respondent filed a Notice of Motion for an order for the production of the items below, and its costs of the motion:

Productions:

- (a) clinical notes and records from Dr. Hany Shafey from 3 years pre-accident to present;
 - (b) the complete file from Dr. Mohammed Khodabandehloo: that the applicant be ordered to make reasonable efforts to ascertain where she consulted with Dr. Khodabandehloo and once ascertained, that she shall make reasonable efforts to request and produce the complete file;
 - (c) the complete education file from Sheridan College including documentation relating to the LINC program;
 - (d) confirmation as to which private college the Applicant was enrolled in after the accident to study database administration and once identified, the complete file;
 - (e) complete income tax returns including all supporting documentation and notices of assessment from 2016 to present; and,
 - (f) a complete copy of the Ontario Works file.
- [5] The respondent submitted that these productions are relevant, they are necessary for it to present its case, and the respondent will be prejudiced without these documents. Regarding its request for tax returns, the respondent argued that the applicant may have found employment, given she is highly educated and has continued her education after the accident, and, as such, it is entitled to this information.

Costs

- [6] The respondent requested \$300, inclusive of HST and disbursements. The respondent submitted that the applicant has acted unreasonably and in bad faith

by refusing to produce or request relevant evidence or responding to requests for productions.

[7] The applicant's position on the request for productions is:

- Items (a): she has provided these records prior to the case conference, in her case conference brief of July 24, 2020, and again on October 5, 2020.
- Item (b): she has provided the file prior to the case conference, and in her case conference brief. In addition, she has requested these again and will provide them on receipt. With respect to the concern about where she consulted with Dr. Khodabandehloo, she provided this information. She also stated that she made the request for records to his professional address as listed on the CPSO website.
- Items (c) and (d): the education files are not relevant, given that the respondent did not consider this information when it denied her NEBs, nor did the (respondent's) assessors require this information in completing their reports.
- Item (e): her complete income tax returns (ITR) are not relevant, nonetheless, she has provided these documents for 2016 – 2018 (notices of assessment, not including supporting documents) with her case conference brief and has agreed to provide her ITR for 2019. Her reported income these years is negligible.
- Item (f): the Ontario Works file is not relevant to the issues in dispute. The applicant last received support from Ontario Works in April 2018. The applicant is currently supported by her husband who also provides care to her.

[8] The applicant's position on the request for costs is that it is not warranted. In summary, she has cooperated with the respondent and has provided the productions as they were received.

RESULT

The Request for Productions

- [9] The respondent's request for productions is granted in part. I find items (a) (b) (c) (d) are relevant to the issues in dispute: (a) and (b) are directly relevant to the medical benefits; (c) and (d), the education files, are relevant to the issue of NEB as they inform the adjudicator about the applicant's (level of) activities before and after the accident.
- [10] With respect to the income tax returns and the Ontario Works file, I am not persuaded that they are relevant to the issues of NEB or the medical benefits. There is no requirement that the applicant produce tax records for the issue of

NEB, and I was not persuaded by the respondent's argument regarding the applicant's education level and her improved chances of employment.

- [11] My reasons for not ordering the Ontario Works file are, first, there is no need for any medical information from it, as the respondent either has or will have the applicant's medical records from three years before the accident. Secondly, to the extent that it may contain information on the applicant's employability, in my view its relevance remains questionable to the issue of NEB, and disclosure of the entire file would be disproportionate to what is in dispute at the hearing.
- [12] In other words, given the issues in dispute, I am not persuaded that the respondent will be prejudiced if not provided with the applicant's complete tax returns or the Ontario Works file.

The Request for costs

- [13] The request for costs is dismissed. Costs are a discretionary remedy and may be awarded when a party has acted unreasonably, frivolously, vexatiously, or in bad faith, pursuant to Rule 19.1. I have considered the parties' submissions and am not persuaded that the applicant's conduct was unreasonable or in bad faith.

ORDER

- [14] The applicant shall produce the following documents immediately or provide proof of best efforts (3 attempts to obtain the records).
- (a) Clinical notes and records from Dr. Hany Shafey from 3 years pre-accident to present.
 - (b) The complete file from Dr. Mohammed Khodabandehloo.
 - (c) The complete education file from Sheridan College including documentation relating to the LINC program.
 - (d) Confirmation as to which private college the Applicant was enrolled in after the accident to study database administration and once identified, the complete file.
- [15] The deadline of January 8, 2021 for exchange of productions, as set out in the Tribunal order for the hearing, is vacated. Should the parties require more time, the new deadline is **January 29, 2021**. The parties may agree to a different deadline for exchange of productions on their own as well.
- [16] The request for costs is dismissed.
- [17] Except for the provisions contained in this Motion Order all previous orders made by the Tribunal remain in full force.

OTHER PROCEDURAL MATTERS

- [18] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

Date of Issue: December 23, 2020

A handwritten signature in black ink, consisting of a stylized 'S' followed by a large loop and a horizontal line extending to the right.

**Samia Makhamra
Adjudicator**